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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,184	05/13/2005	Stuart Michael Ruan Jones	102792-394(11026P1)	8507
27380	7590	03/31/2008		
NORRIS, MCLAUGHLIN & MARCUS			EXAMINER	
875 THIRD AVE			HOGAN, JAMES SEAN	
18TH FLOOR				
NEW YORK, NY 10022			ART UNIT	PAPER NUMBER
			3752	
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			03/31/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/521,184

**Applicant(s)**

JONES, STUART MICHAEL RUAN

**Examiner**

JAMES S. HOGAN

**Art Unit**

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed March 18, 2008 have been fully considered but they are not persuasive. As stated below, the inclusion of subject matter in claims 1, and by dependency 3-5, constitute new matter within the claims. For the purposes of prosecution, the matter has been included as an obvious variant not unlike what is addressed in regards the guard keeping the top lip of the user from contacting the apertures. Therefore, the art as applied in the Office Action dated November 6, 2007 will stand.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 3-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of an aperture not contacting a user's nose is not described in the Specification in any way. What is described in Specification is (page 5, lin24-29) is; "The end 6 of the device is arranged to abut the lower end of the nose. A first end region 7 is *adapted to abut a first nasal passage and a second end region 8 is adapted to abut a second nasal passage* (emphasis added) with

central recess 9, between the first and second end regions 7, 8 to accommodate the septum". The Examiner takes the position that since the apertures are part of what is considered to be the first end region, and then they do, in fact, come into contact with a user's nose and any recitation otherwise is not part of the original Specification.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,724,459 to Congro

Regarding claim 1, Congro teaches a housing (20) for a fragrance element having at least one aperture (60, 62) in side of the housing in a vicinity of one end of the housing, the one end being shaped to abut at the lower end of a users nose at, as per claim 4, the septum of a user's nose, but is also perfectly capable of dispensing without contacting a user's nose. Congro further teaches a means to selectively open and close the aperture with a hinged lid (12). Further as per claim 5, a pivotably attached lid, such as taught by Congo would, impede with a user's intent to guard a lip if used in the way depicted to have the lid between the housing and the users face. However, one having ordinary skill in the art at the time the invention was made would deem it obvious to place the hinge of Congo on the longer side of the housing location since it is known in the art to place a hinge on the longer side of a housing as it would produce a housing

whose hinge would be less likely to fail due to extended use. Further, as per claim 3, pivotably attached lids that produce audible clicks are notoriously well known in the art and their use is considered common knowledge. Summarily, it would have been obvious to one having ordinary skill in the art to modify the dispenser of Congro with a side-mounted pivotably attached lid order to have a dispenser where the lid is also a guard, and would be less likely to fail.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES S. HOGAN whose telephone number is (571)272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S. H./  
Examiner, Art Unit 3752

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754